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Cited 9/11-Related Asthma, Shoulder Injury

Ex-Fire Lieut. Wins Disability Pension After 13-Year Battle With Medical Bd.

By MARK TOOR | SEPTEMBER 25, 2017

Retired FDNY Lieut. Raul Muniz was awarded a line-of-duty disability pension last month after a 13-year fight and two successful court battles.

In 2004, Fire Department physicians declared that Mr. Muniz was not physically fit to fight fires, citing a line-of-duty injury to his right shoulder as well as asthma he believes he contracted as a result of exposure to the toxic stew at Ground Zero following the World Trade Center attacks and during the ensuing clean-up operations.

Medical Board's Dissent

However, the Fire Pension Fund Medical Board decided that his asthma was not disabling, and that while his shoulder injury was disabling, it was not connected to his job.

“They played a game that he wasn’t disabled,” said Mr. Muniz’s attorney, Jeffrey L. Goldberg. He added that such disagreements between the two entities are not uncommon.

Mr. Muniz, who joined the FDNY in 1980, retired later in 2004 on a service pension, which pays 50 percent of final average salary, as opposed to a line-of-duty-disability pension, which pays three-quarters of earnings and is free of state and local taxes.

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He could have stayed on in light-duty assignments until he reached age 65, Mr. Goldberg said, “but for an active firefighter, light duty is an embarrassment. It’s like taking a cop’s gun away.” Most firefighters in Mr. Muniz’s situation take the pension, he said.

Defied WTC Presumption

As a first-responder at Ground Zero, Mr. Muniz was covered by the World Trade Center presumption, a law passed after 9/11 that says a wide variety of conditions, including asthma, diagnosed after the attack must be assumed to have been caused by exposure to toxic debris. But the medical board’s insistence that his asthma was not disabling complicated that claim.

As for the shoulder, Mr. Muniz argued that he filed an accident report in January 2004 saying he slipped and fell on snow and ice while climbing into his fire truck. “I began to fall,” he wrote. “I caught on to the rig handle with my right hand in an awkward position and felt a sharp pain to my shoulder area.”

The Medical Board argued that that the injuries were “chronic conditions that occur over time and are not indicative of an acute or sudden incident.”

However, “a careful review of the website” referenced by the Medical Board showed that a fall could have caused the damage to Mr. Muniz’s shoulder, State Supreme Court Justice Dawn Jimenez-Salta wrote in deciding Mr. Muniz’s second successful Article 78 appeal. The first appeal resulted in the case being remanded to the Pension Fund, which did not change its position.

Orders Disability Payout

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Justice Jimenez-Salta sent the asthma issue back to the Medical Board on Aug. 2 for re-consideration, but ordered a three-quarters pension for Mr. Muniz with respect to the shoulder injuries.

The Medical Board presented “no medical evidence demonstrating that [Mr. Muniz’s] disabling right-shoulder injury was caused by anything other than his line-of-duty injuries,” according to her opinion.

The Justice wrote that the Medical Board did not describe Mr. Muniz’s asthma. The board also did not deal with the possibility that he “could be exposed to noxious fumes and toxins that could escalate his asthma” or that others could be put at risk by his condition, she wrote.

“He’s letting the asthma go,” Mr. Goldberg said. “He’s tired of fighting.”

Mr. Muniz has moved to Arizona, where the air is better for his condition, the attorney said.

The length of battle is not unheard of, Mr. Goldberg said. “Sometimes they will force you to litigation for over a decade,” he said.

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JEFFREY GOLDBERG: 'Played a game to deny disability.'



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